

OCA FILE

22 March 1989
OCA 0998-89

MEMORANDUM FOR: CTC/AGC
NIO/CT

FROM:

Legislation Division

STAT

SUBJECT: Request for Comment: S. 596 - Airline Safety
Legislation

1. Attached for your information and comment is a copy of S. 596, the "Aviation Security Threat Notification Act of 1989," introduced on 15 March 1989 by Senators D'Amato, Grassley and Mikulski, together with Senator D'Amato's introductory remarks and "Prepared Statement" appended thereto (Congressional Record, 15 March 1989, pp. S2716-2717). Senator D'Amato is a member of the Senate Select Committee on Intelligence (SSCI).

2. Threat Evaluation System. The bill is a reaction to the Pan Am Flight 103 disaster. Subsection 1 (a) would require the Secretary of Transportation to establish a system to evaluate and grade the credibility of threats to the safety of international commercial airline travel. If the Secretary determined a credible threat existed, he would be required to notify the Secretary of State and affected air carriers and airports (Subsection 1 (b)).

3. 24-Hour "Hotline". State would be required to establish a 24-hour hotline to inform the public of the existence of "credible" threats, identifying, with "as much specificity as possible", the flight and severity of the threat (Section 1 (c)).

4. Airline Crew Notification. An airline receiving threat information would be required to notify the crew and could not take adverse action against a crew for refusing to fly (Section 1 (d), (e)).

5. Flight Cancellation Regulations. Transportation would be required to develop regulations to require any carrier to cancel a flight if a serious and creditable threat existed and cancellation was deemed by Transportation to be in the public interest (Section 2).

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6. Intelligence Issue. The bill does not explicitly encompass intelligence information (although paragraph 3 of the "Prepared Statement" does call for closer involvement of the Intelligence Community in combatting the underlying problem). The phrase in Section 1 (c) that the threat be identified "with as much specificity as possible" leaves room to protect intelligence information that might be involved in any particular threat. Moreover, presumably the Agency and the Community could work to insure that Transportation and State would include protections for intelligence information into any notification systems established under the bill. The issue raised by the bill is whether these are sufficient protections, particularly in the instance where the intelligence information is source-revealing and is the only source of information on the threat. We would appreciate your comments on this and any other aspect of the legislation.

7. For the present, we intend to defer to the Administration and the Departments of State and Transportation on this legislation.

8. We ask for your comments by 28 March 1989.

9. Your cooperation is most appreciated.

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"(i) are eligible to participate in such plan (or in any other plan of the employer of the same type), and

"(ii) would (if they participated) have available under such plans an employer-provided benefit which is at least equal to the largest employer-provided benefit available under all such plans of the employer to any highly compensated employee, and

"(B) the requirements of paragraph (1)(C) are met with respect to the plan."

(2) CONFORMING AMENDMENTS.—

(A) Section 89(e) of the Internal Revenue Code of 1986 is amended by adding at the end thereof the following new paragraph:

"(3) CROSS REFERENCE.—For plans meeting the requirements of this subsection through eligibility test, see subsection (d)(3)."

(B) Subparagraphs (A) and (C) of section 89(g)(1) of such Code are each amended by inserting "(d)(3)," after "(d)(2)."

(C) Subparagraph (D) of section 89(g)(3) of such Code is amended by inserting "or subsection (d)(3)(A)(ii)" after "subsection (d)(2)(A)(ii)" each place it appears in the text and heading.

(C) ALTERNATE COVERAGE TEST.—

(1) REDUCTION IN REQUIRED COVERAGE PERCENTAGE FROM 80 TO 65.—Section 89(f) of the Internal Revenue Code of 1986 is amended by striking out "80" each place it appears in the text and heading and inserting "65".

(2) CONFORMING AMENDMENT.—Subclause (iii) of section 89(g)(1)(D)(ii) of such Code is amended by striking out "80" and inserting "65".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the amendments made by section 1151 of the Tax Reform Act of 1986.

By Mr. D'AMATO:

S. 596. A bill to make available certain information involving threats to the safety of international commercial airline travel; to the Committee on Commerce, Science, and Transportation.

AVIATION SECURITY THREAT NOTIFICATION ACT
OF 1989

● Mr. D'AMATO. Mr. President, on behalf of myself and Senators GRASSLEY and MIKULSKI as original cosponsors, I rise today to introduce the "Aviation Security Threat Notification Act of 1989." This bill would require the disclosure to airline passengers and flight crews of credible security threats against international commercial aviation.

Twelve weeks ago, America suffered the most serious terrorist attack against a civilian target in its history. On December 21, a terrorist bomb blew apart Pan Am Flight 103 over Scotland taking the lives of 270 innocent victims and spreading grief among the family and friends of those aboard flight 103 and those on the ground in Lockerbie. The people of New York have suffered an especially great loss—60 of the victims were New York residents, and 35 Syracuse University students were aboard the flight. I extend my deepest condolences to the family and friends of all of those killed as a result of the bombing of flight 103.

The families and friends of those aboard flight 103 have suffered greatly since the horrific events of December 21. In addition to dealing with their private grief, they have had to

struggle with the U.S. State Department bureaucracy and insensitivity to their efforts to secure the return of the bodies and personal effects of their loved ones. They also have gained a growing skepticism about the ability of the Federal Government to protect civil aviation targets from future acts of terrorism.

Representatives of the families and friends of those aboard flight 103 have asked me to request that a statement on their behalf be included in the Record. Mr. President, I ask unanimous consent that a copy of this statement be printed in the Record at the conclusion of my remarks.

This tragedy has pointed out the very disturbing problem of selective notification. It is absolutely unconscionable that information regarding a serious terrorist threat was selectively provided to government officials and withheld from the passengers and flight crew of Pan Am 103. This double standard is totally unacceptable and must never be repeated.

My legislation would require public disclosure of credible threats. It provides that:

(1) The Secretary of Transportation must systematically evaluate and grade the credibility and severity of threats against international aviation.

(2) Where a credible, not crank, threat exists, the Secretary must immediately notify the State Department, and the affected airline and airport.

(3) The State Department must establish a new 24-hour toll-free consumer hotline to inform the public about credible threats. The information must be as specific as possible as to the flight affected and the severity of the threat.

(4) The airlines must print the hotline number on tickets. Also, the number must be prominently displayed at airports.

(5) Airlines receiving threat information from the FAA must immediately inform the flight crews. In addition, airlines would be prohibited from taking retaliatory actions against crews that act to avoid threats.

(6) The Secretary of Transportation would have the authority to cancel flights in the case of the most serious threats.

I realize that this legislation will probably be strongly opposed by the administration as well as by certain parts of the airline industry. However, since the Federal Government and the industry seem to be "playing the odds" that another disaster won't occur, we need to do more to enable passengers and crew to protect themselves. These individuals should not be the last to know about terrorist threats. Our flight crews should not be compelled to fly blindly.

Mr. President, I ask unanimous consent that a copy of my legislation be printed in the Record at the conclusion of my remarks.

Mr. President, I urge my other Senate colleagues to support this legislation, and to push for its speedy passage.

Thank you, Mr. President.

There being no objection, the material was ordered to be printed in the Record, as follows:

S. 596

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. (a) Within the 60 day period following the date of the enactment into law of this Act, the Secretary of Transportation (hereinafter referred to as the "Secretary"), shall establish, by regulation, a system for evaluating and grading the credibility and severity of any threat to the safety of international commercial airline travel.

(b) Regulations under subsection (a) shall require the Secretary, with respect to information involving a threat to the safety of international commercial airline travel, to evaluate and grade the credibility and severity of such threat. Upon determining that a credible threat exists, the Secretary shall immediately inform the Secretary of State, and all affected air carriers and airports.

(c) The Secretary of State shall, within such 60 day period, establish a 24 hour toll free consumer hotline to inform the public of credible threats to the safety of international commercial airline travel. The information made available to the public shall identify, with as much specificity as possible, the potentially affected flight and the severity of the threat, graded under subsection (b). Information with respect to the availability of such hotline and its purpose, together with the telephone number thereof, shall be printed on each ticket or ticket jacket, and prominently displayed in appropriate locations at airports.

(d) Any air carrier receiving information and other data pursuant to subsection (b) which affects a specific flight or flights of that carrier shall take such action as may be necessary to immediately notify the flight crew or crews scheduled to operate such flight or flights.

(e) It shall be unlawful for any air carrier to discharge or otherwise discipline any flight crew employee who acts to avoid or mitigate a threat based on such notification.

SEC. 2. Within the 60-day period following the date of the enactment into law of this Act, the Secretary of Transportation shall issue such regulations as may be necessary to require any commercial air carrier to cancel any international flight if the Secretary determines that a serious and credible threat exists as to such flight and that such cancellation is in the public interest.

SEC. 3. As used in this Act, the term "air carrier" shall have the same meaning as that provided for under section 101(3) of the Federal Aviation Act of 1958 (49 U.S.C. 1301(3)).

SEC. 4. There are authorized to be appropriated such sums as may be necessary to carry out this Act.

PREPARED STATEMENT: THE VICTIMS OF PAN AM FLIGHT 103 BEFORE THE SENATE SUBCOMMITTEE ON TRANSPORTATION, MARCH 14, 1989

We are some of the friends and relatives of the American citizens who lost their lives last December 21 when Pan American Flight 103 from Frankfurt and London to New York was destroyed by a brutal terrorist bombing. Nothing that we say or do here can bring our loved ones back. But we are

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here because what you say and do to improve airport and airline security can prevent this tragic story from happening over and over again.

We believe that the 270 lives lost on Flight 103 could have been saved—that this bombing could have been prevented. We believe that those who conclude that little or nothing can be done about terrorist attacks on airlines are grievously wrong, motivated in some instances by commercial consideration and in others by an effort to conceal or tolerate inadequate efforts and dereliction of duty.

We speak in sorrow, but we are motivated not by bitterness but by concern for all those whose lives can still be saved. We are not experts on the cause and cure of terrorism or criminal behavior. But a needless tragedy that scared our lives has required us to learn more about airline security than we ever wanted to know. We are shocked by what we have found. We are determined to obtain action that can substantially reduce the prospects for countless more disasters like Pan Am 103.

Specifically, four problem areas require the earliest possible action. These areas are notification, detection, coordination and compensation.

1. More adequate notification of passengers, baggage handlers and concerned governmental and airline offices of serious, high level threats to airline security is an imperative. The lack thereof is inexcusable. Only a small number of threats are deemed sufficiently serious each year by the FAA to be the subject of a high level security bulletin. Any airline that is the subject of such threat should be obligated to notify each passenger prior to boarding of the issuance of that FAA bulletin, permitting that passenger to choose whether or not to take that flight. Surely every American citizen deserves that freedom of choice based on notice and information. The policy of so-called selective notification is contemptuous of human life, passenger interest and American legal traditions. Had the passengers of Pan Am 103 been informed by the airline about the FAA bulletin, we believe many of them would not have boarded that plane and would be alive today.

In addition, every flight captain should be notified of all threats to his flight and possess full authority to delay it or cancel it if he feels that the security of his passengers cannot be guaranteed. Safety, not sales, can be the only criterion.

2. More adequate detection equipment, personnel and procedures must be installed for every airport and every airline. This will require more money, from both governments and airlines; but the amount now spent per passenger is absurdly low and the current level (or, more accurately, current lack of effective security measures is intolerable. For example, it has been known at least since 1988 that plastic bombs in checked baggage could not be detected by existing systems and posed the single most serious terrorist threat to international travelers. New equipment to detect such bombs has been available at least since 1987. But such equipment had not been installed or even ordered on December 21, 1988; and it still has not been installed or ordered today.

Airport security personnel are too often ill-paid, ill-trained, ill-qualified and uninformated. Their methods and procedures are too often inconsistent from one airline to the next and ill-considered at best. FAA security personnel are also insufficient in number and training. Surely there are no higher priorities in the appropriations process than the saving of our citizens' lives.

3. More adequate coordination, communication and involvement among all agencies engaged in gathering intelligence and combatting airlines terrorism, including the Federal Aviation Administration, the State Department, the Central Intelligence Agency, the National Security Agency, the Federal Bureau of Investigation and airline and airport authorities, is essential to the prevention of terrorist attacks on airlines. Today, however, responsibility is taken by no one and decisions are made by virtually anyone. The FAA largely leaves all questions of implementation to mid-level and low-level airline employees who receive no clear guidelines from the FAA and no carefully and consistently compiled and evaluated information.

4. More adequate compensation by way of damages the families of victims of international airline disasters is the only way to prod the airlines into upgrading and maintaining their security systems, procedures and policies. The obviously outdated Warsaw Convention of 1929 now places an unrealistically low cap of \$75,000 on the value of each passenger's life. As the Government of Italy has already advocated this cap must be eliminated or drastically removed both to protect the families of international flight victims and to give the airlines sufficient incentive to take all necessary security measures.

Each of these four action areas must be addressed now. But each of them takes time, and passenger safety must be protected in the interim. We therefore urge the FAA to enforce the following emergency stop-gap measures until the permanent measures discussed above are in place:

(a) An 800 number should be established with information on airline threats enabling passengers to contact the specific airline mentioned for details and to decide for themselves whether they want to take a particular flight.

(b) All carry-on and checked baggage must be hand searched (until proper bomb detection equipment is in place); sealed as soon as the appropriate security checks have been completed; and matched with passengers. Any unattended or abandoned baggage must then be turned over to security personnel.

(c) The El-Al airline procedures of utilizing security personnel to question all passengers should be adopted by all airlines on at least a stop-gap basis.

(d) Late arriving passengers should either be denied entrance or subjected, regardless of possible flight delay, to the same screening processes as all other passengers.

No doubt these recommended interim procedures will involve cost, inconvenience and complaints. They will also save lives.

Finally, we urge this Committee to obtain a better sense of the confusion and cover-up that now characterize international airline security by investigating a particular case—the case of Pan Am Flight 103. We have attached as an appendix to this statement a series of questions for which you will be able to obtain answers better than we can.

Those answers will not bring back our loved ones, massacred last December 21 at 31,000 feet. Neither will the remedial measures we have advocated here. But at least those measures and others like them can help to increase the safety of our airways. At least they can help to prevent another preventable calamity from inflicting pain on more people, no doubt including people like you and your families. If action is taken now that saves the lives of countless others, then the terrible tragedy of last December will have at least produced some small gain to offset the terrible loss we have suffered.

We are grateful for your consideration of our views and we are hopeful that you will take early action accordingly. ●

By Mr. DOMENICI:

S. 597. A bill to amend the Federal Election Campaign Act of 1971 to limit candidate expenditures of personal funds; to the Committee on Rules and Administration.

CAMPAIGN REFORM LEGISLATION

● Mr. DOMENICI. Mr. President, I have a bill that I introduced last year and since we are now once again engaged in the campaign reform legislation debate, I am going to send to the desk a bill that I believe will be incorporated in many of the reform packages that are considered here and elsewhere.

Essentially what I am trying to do is to say to the U.S. Senate that when we have candidates running for the U.S. Senate who are extremely wealthy and are going to use substantial amounts of their own money, or are extremely wealthy and are going to borrow a lot of money for their campaigns—I am trying to set up a process where we can equalize that by giving the opposition candidate notice that this is going to occur in a timely manner. If notice is not given, then their own resources cannot be used, and if no notice is given, it triggers certain additional fund-raising opportunities, not public financing, but additional opportunities for the candidate who does not have that wealth.

It raises the PAC limits, and that type of thing gives them an opportunity, although it will not ever match the enormous amounts that have been spent by those who spend their own money, and the Supreme Court has said that is their right. But it will give a little bit more fairness to that situation.

Mr. President, the Senate spent a great deal of time and energy during the 100th Congress on the issue of congressional campaign reform. No doubt, this new Congress will at some point wrestle with the difficult issue anew.

We will hear a drumbeat of complaints over the evils that money brings to the electoral process. Bills will be introduced to control this type of spending or that type of spending.

Yet every one of these reforms, whether intended to do so or not, will almost certainly distort the process, helping one type of candidate or one party, while hurting others.

This is a complicated issue, where change begets unexpected results. I doubt that many of the reformers of the 1970's foresaw the growth of the political action committees (PAC's) of the 1980's, a growth that came directly from the reforms of the 1970's.

Mr. President, no Member of this body is comfortable with the sharply escalating costs of Federal elections. I certainly am not. That sense of dis-

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